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9 **BEFORE THE**
BOARD OF REGISTERED NURSING
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. **2011-654**

13 **SYLVIA E. CAYETANO**
14 **10001 Cartagena Drive**
15 **Moreno Valley, CA 92557-2666**

A C C U S A T I O N

16 **Registered Nurse License No. 305718**
17 **Public Health Nurse Certification No. 32619**
Nurse Anesthetist Certification No. 1882

18 Respondent.

19 Complainant alleges:

20 **PARTIES**

21 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
22 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
23 Consumer Affairs.

24 2. On or about September 30, 1979, the Board of Registered Nursing issued Registered
25 Nurse License Number 305718 to Sylvia E. Cayetano (Respondent). The Registered Nurse
26 License was in full force and effect at all times relevant to the charges brought herein and will
27 expire on August 31, 2011, unless renewed.

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3. On or about June 11, 1982, the Board of Registered Nursing issued Public Health Nurse Certification Number 32619 to Respondent. The Public Health Nurse Certification was in full force and effect at all times relevant to the charges brought herein and will expire on August 31, 2011, unless renewed.

4. On or about June 4, 1992, the Board of Registered Nursing issued Nurse Anesthetist Certification Number 1882 to Respondent. The Nurse Anesthetist Certification was in full force and effect at all times relevant to the charges brought herein and will expire on August 3, 2011, unless renewed.

JURISDICTION

5. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code (Code) unless otherwise indicated.

6. Section 2750 of the Code provides, in pertinent part, that the Board may discipline any licensee, including a licensee holding a temporary or an inactive license, for any reason provided in Article 3 (commencing with section 2750) of the Nursing Practice Act.

7. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license. Under section 2811, subdivision (b) of the Code, the Board may renew an expired license at any time within eight years after the expiration.

STATUTORY PROVISIONS

8. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

9. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who

1 holds a license, upon the ground that the applicant or the licensee has been convicted
2 of a crime substantially related to the qualifications, functions, and duties of the
3 licensee in question, the record of conviction of the crime shall be conclusive
4 evidence of the fact that the conviction occurred, but only of that fact, and the board
5 may inquire into the circumstances surrounding the commission of the crime in order
6 to fix the degree of discipline or to determine if the conviction is substantially related
7 to the qualifications, functions, and duties of the licensee in question.

8 As used in this section, "license" includes "certificate," "permit," "authority,"
9 and "registration."

10 10. Section 2761 of the Code states:

11 The board may take disciplinary action against a certified or licensed nurse or
12 deny an application for a certificate or license for any of the following:

13 (a) Unprofessional conduct, which includes, but is not limited to, the
14 following:

15

16 (b) Procuring his or her certificate or license by fraud, misrepresentation, or
17 mistake.

18 . . .

19 (e) Making or giving any false statement or information in connection with the
20 application for issuance of a certificate or license.

21 (f) Conviction of a felony or of any offense substantially related to the
22 qualifications, functions, and duties of a registered nurse, in which event the record of
23 the conviction shall be conclusive evidence thereof.

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25 REGULATORY PROVISIONS

26 11. California Code of Regulations, title 16, section 1444, states:

27 A conviction or act shall be considered to be substantially related to the
28 qualifications, functions or duties of a registered nurse if to a substantial degree it
evidences the present or potential unfitness of a registered nurse to practice in a
manner consistent with the public health, safety, or welfare. Such convictions or acts
shall include but not be limited to the following:

(a) Assaultive or abusive conduct including, but not limited to, those violations
listed in subdivision (d) of Penal Code Section 11160.

(b) Failure to comply with any mandatory reporting requirements.

(c) Theft, dishonesty, fraud, or deceit.

(d) Any conviction or act subject to an order of registration pursuant to Section
290 of the Penal Code.

1 12. California Code of Regulations, title 16, section 1445 states:

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3 (b) When considering the suspension or revocation of a license on the grounds
4 that a registered nurse has been convicted of a crime, the board, in evaluating the
5 rehabilitation of such person and his/her eligibility for a license will consider the
6 following criteria:

7 (1) Nature and severity of the act(s) or offense(s).

8 (2) Total criminal record.

9 (3) The time that has elapsed since commission of the act(s) or offense(s).

10 (4) Whether the licensee has complied with any terms of parole, probation,
11 restitution or any other sanctions lawfully imposed against the licensee.

12 (5) If applicable, evidence of expungement proceedings pursuant to Section
13 1203.4 of the Penal Code.

14 (6) Evidence, if any, of rehabilitation submitted by the licensee.

15 COSTS

16 13. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
17 administrative law judge to direct a licentiate found to have committed a violation or violations of
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case.

20 FIRST CAUSE FOR DISCIPLINE

21 (May 21, 2010 Criminal Conviction for Shoplifting on June 21, 2008)

22 14. Respondent has subjected her registered nurse license to disciplinary action under
23 sections 490 and 2761, subdivision (f) of the Code in that she was convicted of a crime that is
24 substantially related to the qualifications, functions, and duties of a registered nurse. The
25 circumstances are as follows:

26 a. On or about May 21, 2010, in a criminal proceeding entitled *People of the State*
27 *of California v. Sylvia Ellis Cayetano*, in Riverside County Superior Court, case number
28 RIM517517, Respondent was convicted by a jury of violating Penal Code section 490.5,
shoplifting, a misdemeanor.

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1 b. As a result of the conviction, on or about May 21, 2010, Respondent was
2 sentenced to 10 days in jail, to be served on the RSO Weekender Program, and three years
3 summary probation. Respondent was further required to pay \$617.97 in fees and fines and
4 comply with probation terms.

5 c. The facts that led to the conviction are that on or about June 21, 2008, a loss
6 prevention agent at the March Air Force Base Exchange observed Respondent go into the jewelry
7 department and select two necklaces, two sets of earrings, and one key chain and place them all in
8 a Brighton tin box. Respondent continued to shop and approached a cash register with a case of
9 beer and a shirt. When she opened her purse to retrieve her wallet, she placed the tin box
10 containing the jewelry into her purse. Respondent paid for the beer and shirt and left the store
11 without paying for the jewelry. Respondent was detained outside of the Exchange and brought
12 back into the store. As the loss prevention agent was directing Respondent to their security
13 office, he observed her "digging" through her purse. She was told to stop by the agent but she
14 ignored his directions. Respondent removed the tin box from her purse and tossed it onto a sales
15 rack. The loss prevention agent retrieved the tin box. While the agent was calling the Moreno
16 Valley Police Department, Respondent walked out of the security office and out of the Exchange.
17 The entire shoplifting incident was captured by the store's video surveillance system. When an
18 officer from the police department arrived, he viewed the video of the incident. While obtaining
19 the statement of the loss prevention agent, Respondent returned to the store with her husband.
20 The police officer intercepted Respondent and placed her under arrest for petty theft.

21 **SECOND CAUSE FOR DISCIPLINE**

22 **(Procuring RN License by Fraud – Making False Statement on Application for Licensure)**

23 15. Respondent has subjected her registered nurse license to disciplinary action under
24 sections 2761, subdivisions (b) and (e) of the Code for unprofessional conduct in that she
25 procured her registered nurse license by fraud. The circumstances are as follows:

26 a. On or about April 5, 1979, Respondent signed the Application for Examination
27 under penalty of perjury to the truth and accuracy of all statements. Question 7 of the application
28 asked:

1 "Have you ever . . . (f) been convicted of any offense other than minor traffic violations?"
2 In response to the question, Respondent checked the box "No."

3 b. On or about October 24, 1972, in a criminal proceeding entitled *People of the*
4 *State of California v. Sylvia Christina Ellis*, in Los Angeles County Superior Court, Respondent
5 was convicted on her plea of guilty of violating Penal Code section 484, petty theft, a
6 misdemeanor. Respondent was sentenced to 24 months summary probation, payment of fees and
7 fines, and ordered to comply with probation terms.

8 c. Respondent failed to declare her criminal conviction for petty theft on her
9 original application for licensure, and failed to declare the conviction on all subsequent
10 applications for renewal. Such fraudulent and deceitful conduct is substantially related to the
11 qualifications, functions, and duties of a registered nurse.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Registered Nursing issue a decision:

1. Revoking or suspending Registered Nurse License Number 305718, issued to Sylvia E. Cayetano;

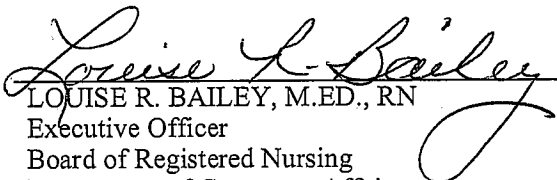
2. Revoking or suspending Public Health Nurse Certification Number 32619, issued to Sylvia E. Cayetano;

3. Revoking or suspending Nurse Anesthetist Certification Number 1882, issued to Sylvia E. Cayetano;

4. Ordering Sylvia E. Cayetano to pay the Board of Registered Nursing the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

5. Taking such other and further action as deemed necessary and proper.

DATED: 1/26/11


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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